IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 647 OF 2003

IN

SUMMARY SUIT NO. 3099 OF 2001

Mrs.Jyoti Shetty .. Plaintiff

versus

Mrs.Geeta wd/o Mahesh Kantawala & ors.. Defendants

...

Mrs.Neela Dholakia for the plaintiff.

Mr.Prasad Rao for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 12th April 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This suit is filed by the plaintiff for recovery of the money allegedly lent to Mahesh Kantawala, proprietor of Mahesh Motors. Mahesh has died and his heirs are sued for recovery of the money. The defendants have filed an affidavit in reply denying that Mahesh Kantawala had taken the

loan and have denied that Mahesh executed the promissory note. The have denied the signature on the promissory note.

3. In the circumstances, plaintiff would be required to prove at trial that the loan was advanced and the deceased executed the promissory note. They would further be required to prove that the present defendants have inherited the property of Mahesh Kantawala. They would further be required to prove that the suit is within limitation as the suit is admittedly filed after the expiry of the period of three years from the date of the promissory note.

4. In the circumstances, triable issues arise. The defendants are granted unconditional leave to defend the suit.

5. Suit shall stand transferred to the list of commercial causes. The defendants to file written statement within a period of four weeks.

D.G. KARNIK,J